forged stock certificates. The broker turned his check over to his bank, which in turn created a deposit credit for F in a New York bank. The accused, knowing of the fraud, received money drawn by F from this account, and was indicted under the New York statute for receiving stolen goods. *Held,* that the accused was not guilty, as the identity of the property taken from the owner had been entirely destroyed. *People v. Hanley* (1919, App. Div.) 173 N. Y. Supp. 692.

New York, by statute, has made the obtaining of property under false pretenses, larceny. N. Y. Penal Law, sec. 1290. It seems that only such property as is a subject of larceny can be obtained by false pretenses. *State v. Klinkenberg* (1913) 76 Wash. 466, 136 Pac. 692. But the New York statute has extended such "property" to cover "any . . . thing in action, evidence of debt or contract or article of value of any kind." Sec. 1290, *supra.* This language has been held to cover such instruments as are not merely evidential, like a common receipt, but are operative in character. *People v. Griffin* (1869, N. Y.) 38 How. Pr. 475; *cf. State v. Scanlon* (1903) 89 Minn. 244, 94 N. W. 686. So a check; and in the instant case the broker was induced to draw and part with a check to his bank. This would seem to make out the crime under the Alabama law. *Clark v. State* (1916) 14 Ala. App. 636, 72 So. 291 (person fraudulently induced to give a suretyship bond to a third party, which he had to pay). But the New York statute has been construed to apply only to instruments complete before they were "obtained" by the accused; and not to cover fraudulently procuring such an instrument to be made and delivered, even to oneself. *People v. Deinhardt* (1913, N. Y.) 179 App. Div. 228, 166 N. Y. Supp. 502 (deed). Hence, in the principal case F obtained both the bank credit and its proceeds without larceny, and held the "legal title" thereof. Like any defrauder, he might have been charged by the person defrauded as constructive trustee of whatever he had received in exchange for the property obtained by fraud. *Farwell v. Kloman* (1895) 45 Neb. 424, 63 N. W. 798; see *American Sugar Co. v. Fancher* (1895) 145 N. Y. 552, 40 N. E. 206. And statutes have made trustees—in New York "trustees of any description"—guilty of larceny for intentional conversion. N. Y. Penal Law, secs. 1290, 1302; R. I. Genl. L. 1909, ch. 345, sec. 16. But whether constructive trustees would be held to fall under the language of these sections may well be doubted. If not, the principal case is clearly sound; as such an interpretation would be necessary to convict of receiving *stolen* goods, even if the accused had received the identical "trust" *res*—the claim against the bank—instead of its proceeds.

SPECIFIC PERFORMANCE—MUTUALITY OF OBLIGATION.—L had contracted to exchange his land in Illinois for R's land in Canada. L then made a contract with K for the sale of the Canada land to be received from R: K to buy on certain terms, but to have the power of annulling the contract by defaulting and forfeiting $500 liquidated damages. As security to K, L "assigned" his contract with R to a stakeholder. This suit was brought by K and the stakeholder to compel specific performance (1) of R's contract with L; (2) of L's contract with K. *Held,* that the plaintiffs were not entitled to relief, since as to them the contracts were not "mutual in obligations and remedy, and enforceable by either party." *Lunt et al. v. Lorscheider et al.* (1918, Ill.) 121 N. E. 237.

Equity should grant the plaintiff specific performance of a bilateral contract unless, *after the defendant's forced performance,* the plaintiff's own obligation will remain unperformed and is of such a nature that the defendant will still, *on grounds independent of mutuality,* be refused specific performance. See COMMENT (1917) 27 YALE LAW JOURNAL, 261. This doctrine covers the almost universal rule that a plaintiff, though his own promise is oral, may have specific performance if the defendant has signed the memorandum. *Western Timber*

Co. v. Kalama River Lumber Co. (1906) 42 Wash. 620, 85 Pac. 338. So even in the state of the instant case. *Ullsperger v. Meyer* (1905) 217 Ill. 262, 75 N. E. 482. And married women, and infants upon reaching majority, may have specific performance, although equity would not so have aided the other party. *Fennelly v. Anderson* (1851) 1 Ir. Ch. 706, and *Mullens v. Big Creek Gap Coal Co.* (1895, Tenn. Ch. App.) 35 S. W. 439 (married women); *Clayton v. Ashdown* (1714) 9 Vin. Abr. 393 (infant). And where the plaintiff, although not specifically compellable, has already in fact fulfilled his obligation, equity will grant him specific relief. *Topeka Water Supply Co. v. Root* (1895) 56 Kan. 187, 42 Pac. 715 (personal services exchanged for land). Similarly one whose own faulty title precludes him from specific performance may yet be compelled to convey. See *Jasper v. Wilson* (1908) 14 N. Mex. 482, 492, 94 Pac. 951. And so with one who has agreed to loan on an insurance policy, although he could not have forced the other party to borrow. See (1918) 27 YALE LAW JOURNAL, 1083. The decisive factor is the condition of the defendant *after* the decree; in the last case suit on the debt at law is in effect specific enforcement of repayment. Nor should it be of consequence that the plaintiff had by the contract a power and privilege—i. e., "option"—to terminate his obligation; and this view the Supreme Court has recently adopted. *Guffey v. Smith* (1914) 237 U. S. 101, 35 Sup. Ct. 526. If the defendant secures or has assurances of securing every thing for which he contracted, he has in fairness no ground for objection. Hence equity, in England and many of our states, enforces his obligation. *Lumley v. Wagner* (1852, Eng. Ch.) 1 De G. M. & G. 60; *Zelleken v. Lynch* (1909) 80 Kan. 764, 104 Pac. 563. So in the principal case, although neither R nor L had specific remedy against the plaintiffs, each seems amply protected. To obtain relief against R under the assignment or against L on his contract, the plaintiffs must tender performance of every condition precedent bargained for. In refusing relief the court mechanically follows the old formula of mutuality as given in Fry, *Specific Performance* (4th ed., 1903) 203, obscure though it is in principle, and artificial in extent. While it is still impossible to determine the arithmetical weight of authority, it is believed that the tendency toward casting aside this formula is fast gaining way. See COMMENT, *supra; Pucini v. Bumgarner* (1918, Okla.) 175 Pac. 537.

SURETYSHIP—SUBROGATION OF CREDITOR TO INDEMNITY BOND GIVEN TO SURETY BY A STRANGER.—The plaintiff, having sued as creditor of W, attached certain chattels. To dissolve the attachment W filed a surety bond signed by the Illinois Surety Company. This surety company first obtained a bond of indemnity from the defendant. Later the surety company became insolvent, and the plaintiff claimed to be subrogated to its rights against the defendant, created by the indemnity bond. *Held,* that the plaintiff was not entitled to subrogation. *Dinsmore v. Sachs* (1919, Md.) 105 Atl. 524.

There are many cases holding that a creditor is subrogated to the rights of his surety with respect to securities given to the surety by the principal debtor. *Maure v. Harrison* (1692) 1 Eq. Cas. Abr. 93, pl. 5; Ames, *Cases on Suretyship,* 620, and note. There are some limitations on this rule. See *Jones v. Quinnipiack Bank* (1860) 29 Conn. 25. There are two theories on which the creditor's foregoing right of subrogation is based. (1) The surety is frequently said to hold the security as a trust fund for payment of the creditor's claim against the principal debtor. *Moses v. Murgatroyd* (1814, N. Y.) 1 Johns. Ch. 119. This theory is not always approved, even where the securities in question were deposited by the principal debtor himself. It is certainly not applicable in a case like the present where the securities are deposited by a stranger solely for the purpose of indemnifying the surety. *Hampton v. Phipps* (1882) 108 U. S. 260; *Hasbrouck v. Carr* (1914) 19 N. Mex. 586, 145